

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOE SMITH,

Plaintiff

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants

Case No.: 2:19-cv-00236-APG-VCF

**Order Granting Unopposed Motion to  
Dismiss**

[ECF No. 27]

Defendants Nethanjah Childers and Joey Jeffries move to dismiss plaintiff Joe Smith's complaint because Smith has not produced initial disclosures or responded to the defendants' discovery requests. The defendants filed a motion to compel, which the court granted. ECF Nos. 24; 25. However, Smith still has not responded to the discovery requests. He also did not respond to the defendants' motion to dismiss.

Under Federal Rule of Civil Procedure 37(b)(2)(A)(v), I may sanction a party who "fails to obey an order to provide or permit discovery," including by "dismissing the action or proceeding in whole or in part." Additionally, under Rule 37(c)(1)(C), I may impose a similar sanction against a party who "fails to provide information or identify a witness as required by Rule 26(a) or (e), . . . unless the failure was substantially justified or is harmless." Before imposing a dismissal sanction, I "must consider (1) whether the claimed noncompliance involved willfulness, fault, or bad faith and (2) the availability of lesser sanctions." *Merch. v. Corizon Health, Inc.*, 993 F.3d 733, 740–41 (9th Cir. 2021).

Smith has not provided his initial disclosures and did not respond to the defendants' discovery requests. ECF No. 27-1. Smith also did not comply with Magistrate Judge's order

1 compelling him to do so. ECF Nos. 25; 27-1. Smith has had ample opportunity to respond to  
2 discovery and comply with the court's order, but he has not done so. Smith is at fault for his  
3 own failure to participate in this litigation. There are no lesser sanctions available because Smith  
4 is non-responsive, has already disobeyed a court order to participate in discovery, and his lack of  
5 action renders it impossible to move the case forward. Consequently, I grant the defendants'  
6 motion to dismiss.

7 I THEREFORE ORDER that defendants' Nethanjah Childers and Joey Jeffries' motion  
8 to dismiss (ECF No. 27) is GRANTED. The clerk of court is instructed to enter judgment in  
9 favor of defendants Nethanjah Childers and Joey Jeffries and against plaintiff Joe Smith, and to  
10 close this case.

11 DATED this 19th day of March, 2022.



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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE